IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/02/2004

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

WRIT PETITION No.15217 of 1996

S.Damodaran ... Petitioner

-Vs-

1. The Presiding Officer,
II-Additional Labour Court,
High Court Campus,
Madras-600 104.

2. The Management of
P.ORR & Sons Ltd.,
Anna Salai,
Madras-600 002. ... Respondents

Writ Petition under Article 226 of the Constitution of India
praying for issuance of writ of certiorarified mandamus as stated therein.

!For Petitioner .. Mr.S.Senthilvelan

^For Respondents .. Mr.M.Elumalai for
Mr.M.Subash Babu, for R-2
Labour Court R-1

:ORDER

The petitioner has sought for issuance of writ of certiorarified mandamus for quashing the Award, dated 22.9.1995, made in I.D.No.458 of 1993, by the first respondent Labour Court and to direct the second respondent management to reinstate the petitioner in service with full backwages, continuity of service and other attendant benefits.

2. According to the petitioner, he joined the services of the second respondent as Machine Operator in the year 1983 and the second respondent issued a charge memo, containing two charges, dated 9.9.1992, to him alleging that on 8.9.1992 at 9.50 p.m., the petitioner while on duty came to the Shift Supervisor and abused him in a filthy language and caught hold of his shirt collar and pushed him on a nearby wall and his behaviour was misconduct under Clause 17(k) of the Standing Order. The petitioner denied

the charges in his reply, dated 16.9.1 992 and not satisfied with the same, an enquiry was ordered. The petitioner participated in the enquiry and examined himself as a witness on his side. The enquiry officer found the charges proved and accepting the report, the second respondent issued a second show cause notice to the petitioner asking him to submit his explanation as to the proposed penalty and the explanation was submitted. The second respondent imposed the punishment of dismissal on the petitioner and the petitioner raised an industrial dispute before the first respondent in I.D.No.458 of 1993. The second respondent marked 12 documents on its side by consent and no oral evidence was adduced by the parties. The labour court held the first charge under clause 17(k) of the standing order against the petitioner proved and the punishment of dismissal is not disproportionate to the charge proved and passed the award dismissing the claim. Challenging the same, the present writ petition came to be filed.

3. Before the first respondent Labour Court, the petitioner did not question the fairness of the enquiry or the validity of the findings of the enquiry officer and arguments were advanced only under Section 11-A of the Industrial Disputes Act. The learned counsel for the petitioner contended that the order of punishment has been passed by the second respondent management taking into account the past record of service of the petitioner and the petitioner was not put on notice about the details of the past record and there is denial of opportunity to explain the past record of service at the appropriate time and it vitiates the final order of punishment and in support of the same, he relied on the decision of a Division Bench of this Court in The Management of Madras Fertilizers Limited vs. The Presiding Officer, I-Additional Labour Court, Madras and others, reported in 1990(1) LLJ 298. Per contra, the learned counsel appearing for the second respondent contended that past record of service was taken into consideration while awarding punishment only to see whether any mitigating circumstance exists for awarding lesser punishment and the punishment of dismissal was awarded to the petitioner only for the misconduct proved in the enquiry and the past record did not weigh with the Management while imposing the extreme penalty and hence it is not vitiated and in this regard, he relied on another Division Bench Judgment of this Court in Engine Valves Limited vs. Labour Court, Madras and another, reported in 1991 (1) LLJ 372.

4. While dismissing the petitioner from service, the second respondent management has stated in the order that the gravity of the act of misconduct committed by the petitioner, the aggravating and extenuating circumstances and his past record of service were taken into consideration. Prior to that, the management had given a second show cause notice to the petitioner with regard to the proposed penalty to the proved charge and sought his explanation and after considering the explanation, the order of dismissal came to be passed. What is complained of by the petitioner now is that he was not put on notice about the details of past record of service and there is denial of opportunity to explain the same at the time of imposition of the punishment. A Division Bench of this Court in the decision in Madras Fertilizers Limited case held that the past record of service of the employee had weighed with the management on the question of imposition of extreme

penalty and the employee had been denied the opportunity to explain the past record of service at the appropriate time and there was a violation of the principles of natural justice, which vitiated the order of punishment. Later, another Division Bench of this Court in the case of Engine Valves Limited considered the question as to whether the punishment of dismissal is vitiated on account of not discussing the details of the past record though past record is referred to in the order of dismissal and held that the Standing Order may cast an unilateral obligation on the authority to take into account the previous record with no further duty or a corresponding right in favour of the employee to insist upon consideration by a detailed discussion of the materials contained in such previous record. For purpose of better appreciation, the reasoning of the Division Bench is extracted below.

"11. .... The decision of a Division Bench of this Court in Madras Fertilizers Case (Supra) will have no application to the present case. That was a case where the learned Judges were of the view, on facts as found referred to in the report, that the past record of service of the employee has itself weighed with the Management on the question of imposition of extreme penalty, and formed along with other charges basis thereof unlike the case before us. From the order dated 5th August, 1975 in the present case, we are of the view that the past record of service was referred to only with a view to find out whether there was any mitigating or extenuating circumstances. Having regard to the peculiar feature of the Order in question in the case before us and the ratio of the Supreme Court, we are of the view that the Standing Order in question is in the nature of an enabling provision casting an unilateral obligation on the concerned authority to take into account the previous record with no further duty or a corresponding right in favour of the employee to either insist upon the issue of a second show cause notice and an opportunity or consideration by a detailed discussion of the materials contained in such previous record. (emphasis supplied) The factual reference in the Order to the consideration having been made of the previous record, in our view constitutes sufficient compliance with the requirements of the Standing Order in question and the grievance made about the nonconsideration of past record of service before the Labour Court as well as the learned Single Judge and which found their acceptance is wholly unjustified and unwarranted. The nature of the consideration that is required could be indicative of the manner in which it requires to be considered. In the light of the ratio of the Apex Court that it is meant to be for the unilateral consideration of the Authority, we are obliged to conclude that the manner of consideration of the past record adopted in the case on hand constitutes sufficient consideration as well as compliance with the Standing Order in question and the order of punishment could not be said to have been vitiated on this account. ...."

5. In the present case, as admitted by the parties, there is no Standing Order for the second respondent which mandates the issue of second show cause notice. Still, the second show cause notice was issued in which it has been stated that the gravity of the proved misconduct and the past performance of the petitioner was considered while coming to the provisional conclusion on penalty. The learned counsel for the second respondent submitted that the petitioner was found guilty of charge of physically assaulting and abusing the

superior which is sufficiently grave to justify the order of dismissal and the past conduct was considered only to find out whether there was mitigating circumstances.

6. The Division Bench in the decision in Engine Valves case, referred to supra, has categorically held that past conduct is only for the unilateral satisfaction of the employer and it confers no right on the employee to insist upon consideration by detailed discussion of the materials contained in it. In view of the above decision, there is no mandate cast upon the management to put on notice the employee about the details of his past record of service in the matter of imposition of the punishment and it cannot be insisted upon by the employee also.

7. The decision in Madras Fertilizers case will have no application to the present case since that was a case in which the past record of service of the employee has itself weighed with the management on the question of imposition of extreme penalty and formed basis thereof unlike the present case. The manner of consideration of the past record in this case is only with a view to find out whether there was any mitigating or extenuating circumstance and the gravity of the misconduct formed the basis for passing the order of dismissal. The contention of the petitioner that the dismissal order is vitiated is misconceived and liable to be rejected. The finding of the Labour Court is based on materials on record before it and it does not call for any interference.

8. The writ petition is dismissed. No costs.

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Internet: Yes.

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To:
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